REMARKS/ARGUMENTS

Applicant's November 12, 2004 Response to the Office Action of August 11, 2004 received a 37 CFR §1.145 Restriction Requirement. Pursuant to the practice of M.P.E.P. 821.03, the Amendment "A" subject of Applicant's November 12, 2004 Response was not entered. Hence, the subject **Application text remains as originally presented.**

Original claims 1, 3, 5, 7, 8, 12, 17 and 18 are hereby amended.
Original claims 6 and 11 are hereby cancelled.
Original claims 2, 4, 9, 10 and 13 – 16 remain unchanged.
Claims 19 – 35 are new.

The Restriction Requirement between claims 1 – 18 and 19 – 35 is respectfully traversed. The Examiner's differentiations between the inventions of original claims 1 – 18 (Specie II) and new claims 19 – 35 (Specie I) do not define "independent and distinct inventions" under the practice of 35 U.S.C. 121. Applicants' have disclosed but one invention. The Examiner's constructive difference between claims 1 – 18 and claims 19 – 35 is one of breadth and scope descriptive of the **same structure**. Applicants have disclosed but one structural embodiment of the invention. The claims of both Specie sets read on the **single invention embodiment** described by Applicants' specification. The same invention elements are present in both claim sets. The only differences are of descriptive specificity.

Applicants' original claim 4 is directed to "A personal assistance apparatus" having 5 elements: 1) seating surface, 2) mast, 3) frame, 4) wheels, 5) brakes. Applicants' new claim 22 is directed to "A personal assistance apparatus" having 5 elements: 1) load platform (seating surface), 2) linear actuator (mast), 3) base frame, 4) wheels, 5) brakes. **The <u>structure</u> disclosed by Applicants' specification corresponding to each claim element of both claims 4 and 22 is <u>identical</u>.** There is but one invention embodiment disclosed and claimed in this application.

The Examiner's reconsideration of the objection to the drawing is respectfully

requested. The reference character 61 refers to a "friction shoe" and is used consistently for that identification throughout the several figures of the drawing. Reference character 64 is used throughout the drawings to identify a "lower load bar." Reference character 67 is used throughout the drawings to identify an "upper load bar." However, the reference character 64 was used incorrectly in the specification paragraphs [0023] in lieu of reference character 61 and again in paragraph [0027] in lieu of reference character 67. The specification is hereby amended to correct these inaccurate uses of the reference character 64.

To eliminate any possibility of ambiguity or misinterpretation of the clearly graphic disclosure presented by Applicants' Figures 1, 2 and 3, paragraphs [0010], [0014] and [0033] of Applicants' specification have been amended to describe the structural relationships of those Figures in greater detail. There can be no question that the four support points of wheels 12, 13, 14 and 15 illustrated by Figures 1, 2, and 3 geometrically define a closed perimeter. It is also an irrefutable given that a closed perimeter defines an area within the perimeter. To clearly characterize the area within the wheel support point perimeter, Applicants' have amended the specification at paragraph [0014] to adopt the descriptive term "stability area." Within this "stability area", the translational axis 32 of Applicants' linear actuator is now claimed as intersecting the floor surface.

In like manner, Applicants' paragraph [0033] has been amended to include an express definition of "continuous" that is consistent with the previously cited dictionary definition and the clear, graphic representation of Figures 2 and 3.

Original claims 1 – 18 were rejected under 35 USC §102(b) as anticipated by the French Invention Publication No. FR 2 652 262 – A1. Original claims 1 – 18 were further rejected under 35 USC §102(b) as anticipated by US Patent No. 5,148,557 to V. Fridman et al. Original claims 12 – 18 were also rejected under 35 USC §102(b) as anticipated by US Patent No. 5,411, 044 to A. Andolfi.

The French Invention Publication discloses a personal assistance apparatus

uniquely designed to assist an invalid bathing process. A vertically translated seat 32 is suspended by cables18 threaded over pulleys 22 secured to a vertical rail frame 18. The entire rail frame and seat structure is secured at one distal end of a wheel supported base frame. The rail frame includes the capacity to lower the seat structure to and below a wheel support plane as illustrated by Figure 1 which shows the seat in a bathing pool immersion position. Although the French Publication discloses a brake mechanism for the frame support wheels, the disclosure includes no suggestion of linking the wheel brake operation to a particular height position of the seat.

As presently amended, Applicants' independent claims 1 and 12 clearly describe a structural linkage between the position of the seat and engagement of the wheel brakes. The "personal assistance apparatus" of claim 1 includes "an automatically engaged mechanism for restricting translational mobility of the apparatus over said floor plane when said seating surface is positioned substantially contiguous with said floor plane". The French Publication is devoid of any suggestion of a brake mechanism that is **automatically engaged by the seat height position.**

The same patentably novel concept is described by applicants' claim 12 description of a mobile lifting device having a "braking mechanism to automatically restrict translational movement of said base frame over said floor surface by positionment of said load platform at substantial contiguity with said floor surface." Please note the conjunctive adverb "by" in this description. **Manual brake application** that is selectively applied when the platform is contiguous with a floor surface is **precluded.** If the brake application is manual, there is no structural necessity for application "by" a coincidental location of the platform against the floor surface. The significant thrust of Applicants' description is that brake engagement is a causative consequence of floor engagement by the seat. The French Publication provides no suggestion of this concept.

The present amendments to the remaining dependent claims 3, 5, 7, 8, 17 and 18 merely correct those descriptions for antecedent consistency with the respective parent claims.

U.S. Patent No. 5,148,557 to V. Fridman et al describes an apparatus for

lifting an invalid from a chair and supporting the invalid by his frontal torso during a subsequent transport process. The Fridman et al disclosure presented at column 7, lines 6 – 58 clearly describes a procedure for removing an invalid from a **"chair"**. The seat structure 160 (Fig. 6) is removably attached to the lifting tube 70 by means of lifting arms 74 (column 5, lines 6 – 9). The lifting tube 70 translates within the hollow tube support column 240 (column 6, lines 47 – 55). As is obvious from the Fig. 1 illustration of the Fridman et al disclosure, the lifting tube 70 may be lowered no further than the upper end of the support column 240 which is considerably above and beyond "contiguous" proximity of the floor support surface. The Random House College Dictionary, 1st Ed., defines "contiguous" as "1. touching; in contact". Claims 1 – 5, 7 – 10 and 12 - 35 describe Applicants' invention as having the capacity for a "contiguous" relationship to a respective floor plane. Clearly, the Fridman et al disclosure includes no structure or teaching of structure that will position a seating surface "contiguous" of a floor surface. Consequently, Applicants remain mystified by such construction the Examiner may be interpreting from the Fridman et al disclosure to justify the conclusion that the "drive mechanism (70, 260)" of Fridman can "translate said load platform along said mast substantially to and from a floor surface engagement postion." The load platform of Fridman et al is incapable of approaching the floor surface with sufficient proximity to be **credibily** characterized as 'contiguous".

The foregoing deficiency of the Fridman et al disclosure in anticipating or suggesting the invention of Applicants' amended independent claims 1 and 12 is distinct and separate from the clear absence of a braking mechanism that is automatically engaged by positioning the apparatus seat on the floor. The Fridman et al brake is selectively applied, **manually**.

U.S. Patent No. 5,411,044 to A. Andolfi describes a "walker" apparatus for assisting an ambulatory individual to rise from a chair seating position to an erect standing position. The "load platforms" of Andolfi are crutch support pads 137 secured to the upper distal ends of a telescoping post 135. The telescoping post 135 is axially translated within a second post 133 and rotatively driven along the second post axis by screw shaft 105c. As in the case of the Fridman et al disclosure, the

capacity of the Andolfi apparatus to place a lifting surface downwardly toward a floor support surface is limited to the length of the second post 133. The crutch support pads 137 may be lowered toward the floor only to the upper distal end of the second post 133. There is absolutely nothing in the Andolfi disclosure to suggest that the load platforms 137 of Andolfi may be translated to a floor surface engagement position as is described by Applicants' new and amended independent claims 1, 12. 19 and 27.

The above-described **incapacity** of the Andolfi disclosure to meet applicant's claimed structural capacity of seat contiguity with the apparatus support surface is separate and distinct from Applicants' claimed relationship between the seat-floor engagement and the wheel brake engagement. As with the French Publication and the Fridman et al disclosures, the Andolfi disclosure is for a manually applied break.

In view of the foregoing amendments, remarks and analysis of the cited prior art, Applicants respectfully request the Examiner's reconsideration of the invention as defined by claims 1 – 5, 7 – 10 and 12 – 35.

Respectfully Submitted,

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CERTIFICATE OF MAILING UNDER 37 CFR §1.8(a)

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